



Prime Minister A

To be aware of this. No need to read for meeting on 13/3

AT 12/3

PRIME MINISTER

LOCAL GOVERNMENT POLICIES

COMMISSIONER LEGISLATION

My Department has been developing the proposals for contingent Commissioner legislation agreed by E(LF) last December. This further work has raised a number of policy issues - on the accountability of the Commissioners, the duration of their initial appointment, payment of Commissioners, Commission procedures and the duration and application of the Bill - and these are covered in the attached Memorandum.

On most of the issues I can make firm proposals to which I seek your and colleagues' agreement. On some however - in particular, the accountability of the Commission and the duration of their initial appointment - I have not yet reached a final conclusion and would welcome views.

In the light of the political uncertainties in Liverpool, it is important that we have a draft Bill ready by the beginning of the next financial year. Parliamentary Counsel is therefore already working to Instructions based on the policy agreed by E(LF) and the firm proposals in this Memorandum.

There is a wide group of colleagues who have a direct interest in this subject. This is reflected in the copy list below, which does not correspond to the membership of any single Cabinet Committee. I suggest that, given the importance of the topic, you will wish to call an ad hoc meeting.

I am copying this letter and the attached Memorandum to Willie Whitelaw, Leon Brittan, Keith Joseph, Michael Heseltine,



Norman Tebbit, George Younger, John Biffen, Norman Fowler,
Nicholas Edwards, Peter Rees, Michael Havers, Nicholas Ridley,
and to Sir Robert Armstrong.

PJ

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12 March 1984

CONFIDENTIAL

LOCAL GOVERNMENT POLICIES

COMMISSIONER LEGISLATION

Memorandum by the Secretary of State for the Environment

1. Following the agreement of E(LF) (Prime Minister's Private Secretary's letter of 1 December 1983 to my Private Secretary) drafting of contingent legislation to allow for the dismissal of elected local councillors and the appointment of Commissioners is well advanced. The purpose of this memorandum is to seek the agreement of colleagues to certain developments of the policy previously outlined (a list of the main points previously agreed is at Annex A).

ACCOUNTABILITY

2. Although a Commission will inherit some lines of answerability to local people - through its fiduciary duty as a rating authority (including its ability to raise a single emergency rate in its first financial year of operation), the opportunity for challenge to its accounts, the local ombudsman - the main electoral link will be broken. It would not be acceptable - or, I suspect practicable - for a non-elected public sector body, which will have great influence over individuals' lives across a range of services and wide discretion in its operation, to be subject to no outside constraints; it has to be answerable to Central Government and so to Parliament. The question is what degree of accountability or control is necessary, bearing in mind that there is no relevant precedent for the assumption of all the powers of an elected authority by an unelected body.

3. The Commissioners will have three main lines of accountability

- accountability to the courts for the performance of main objectives under the commissioner legislation;
- accountability to the courts, the auditor (appointed by the Audit Commission), etc. for the performance of their duties as a local authority (most of the requirements placed on local authorities will continue to apply to a commission);
- accountability to the Government and to Parliament for their actions as the appointees of the Secretary of State for the Environment

4. The first two lines of accountability are relatively straightforward. The commissioner legislation will set out the broad objectives to be pursued in restoring financial stability and a reasonable level of service provision in the authority which has been taken over (an outline of the relevant provisions is at Annex B) and failure by the Commissioners to pursue these objectives would be actionable in the courts. Virtually all the duties of local authorities - with the exception of the procedural matters discussed later - will devolve on the Commissioners, and they will be answerable to the auditors, to service Ministers, and to the courts in the normal way in respect of these duties. Existing legislation contains a substantial number of default and direction giving powers which would be available to individual service Ministers if necessary, and will be applicable to a Commission in the same way as to its predecessor authority.

5. The third line of accountability, accountability to the Government, is more difficult. As a minimum we should provide that the Commission is required to make such reports to the Secretary of State as are requested from time to time, which will be laid before Parliament and published locally; and that the Secretary of State should have the power to appoint and dismiss Commissioners on such grounds as he may determine. But we should

also have a power to give the Commissioners a clear indication of the broad thrust of the policies we wish them to pursue, in more detail than the general objectives set out in the legislation. At the same time, we do not wish to be in a position to give them detailed instructions: if we did so, the distancing achieved by the appointment of a commission would be forfeited, and we should be seen to be operating a form of direct rule from Whitehall and so be subjected to detailed day-to-day questioning on all the activities of the commission. A power of specific direction could for instance lead to pressure on the government to intervene in all or any of the thousands of decisions which an authority like Liverpool, with a budget of over £200m a year, has to take.

6. There are two approaches to this issue which could be embodied in the legislation: to issue guidance, which is not binding on the commission; or to issue general directions which are binding but cannot deal with detailed matters. A power of direction which was restricted to the general functions of the commission would be so broad as to be little different from, and less effective than, the general duties to be incorporated in the legislation (see Annex B). It would be extremely difficult to draft a direction-making power which, while enabling the Secretary of State to intervene in matters of policy, would not involve him in the day-to-day operation of the commission since, in practice, the distinction between "policy" decisions and "operational" decisions cannot be clearly drawn. For this reason, I strongly prefer a power of guidance. The Commissioners will in practice be hand-picked for the job; we shall have discussed what needs to be done before they are appointed; and a clear statement of what we are looking to them to achieve should be sufficient to ensure that they do not drift off course. It is scarcely conceivable that a commission appointed in this way will not do all it can to follow its guidance.

7. The Commission Bill will refer to 'the Secretary of State'. It will initially be for the Secretary of State for the Environment to handle, after consultation with colleagues, the appointment of Commissioners and the setting of financial objectives and he will be answerable to Parliament for that. A Commission's decisions will, however, cover a wide range of issues within the remit of each service Minister, and where such issues are raised in Parliament it will be for the service Minister concerned to answer. It should normally be enough to say that the commission has been appointed to take day-to-day decisions (the financial propriety of which will be open to scrutiny by the auditor appointed by the Audit Commission), and that we are satisfied that it will do so effectively, a line I adopted from time to time when detailed matters were raised in relation to Health Authorities. The Parliamentary Select Committees, or perhaps a specially created Committee of the House, would be able to examine Commissioners if they wished to do so. Ministers would, of course, have to give substantive answers on wider policy issues and on any guidance given.

PAYMENT OF COMMISSIONERS

8. It was originally proposed that the remuneration of Commissioners should be met from the funds of the local authority concerned (see paragraph (c) of Annex A). On further consideration, I do not think this is appropriate. Commissioners will be Central Government appointees. It will be expensive to get the right number and calibre of individuals, and we will meet criticism if we impose such costs on local people. I therefore propose that we pay Commissioners from central funds. On the assumption of between 10 and 15 Commissioners, with salaries in the region of £30-40,000, the total cost (salaries, pensions, expenses etc) to public funds might be in the range £500-750,000 per year.

DURATION OF A COMMISSION'S FIRST TERM OF OFFICE

9. We must present a Commission not as some new local government structure but as a temporary mechanism for restoring order in a local authority and paving the way for fresh elections. A Commission's initial term of office should, therefore, be as short as possible. We originally considered that the initial period of appointment provided for in the Bill should comprise the remainder of the financial year of appointment and the whole of the following financial year. It is for consideration whether this is too long.

10. An initial term of not more than one year from the time of appointment might be more acceptable. This approach would leave the newly elected council to implement some of the main budget decisions of the commission. But the threat of a further commission appointment would remain and the temporary nature of a commission's appointment would be clear on the face of the Bill. If after a year it was clear that more time was needed we could seek Parliament's agreement for an extension of a further year by Affirmative Resolution of both Houses of Parliament. I would welcome colleagues' views on this issue.

PROCEDURES ETC OF A COMMISSION

11. Although a commission will take on all the functions and duties of a local council, it will not be able to operate a local authority's formal procedures or committee structure. It would for instance be unrealistic to require the advertisement of, public access to and publication of the minutes of all commission meetings. Not only will the commission be an executive body rather than a deliberative assembly, but in its first months of office it is likely to be operating in a highly charged local atmosphere in which public meetings could become a focus for disruption. I therefore propose that the Bill disapplies the relevant

provisions of the Local Government Act 1972 and provides for the commission to set its own procedures.

12. We will wish to ensure, however, that a commission keeps local people closely in touch with its decisions and actions. I propose therefore that the Bill requires a commission to publish a detailed statement of planned expenditure and arrangements for financing it as soon as practicable after taking office (and if appropriate each year thereafter). This would be in addition to reports to the Secretary of State on action taken which would be laid before Parliament and published locally. The Bill would also require the commission to hold one public meeting each year if practicable to explain their stewardship and answer questions. In addition to these statutory requirements I would stress when appointing Commissioners the importance of providing the press and local people with as much information as possible on their decisions and the background to them. This might involve holding further public meetings as the local political climate became calmer.

13. I do not believe it would be practicable for a commission to inherit the formal requirement to form major policy committees - police, education, social services - because of the number of Commissioners that would be necessary and the duty in certain circumstances to co-opt. I therefore propose that the Bill removes the requirement to form such committees and co-opt outsiders, and that the functions of the committees are transferred to the commission itself. The inability of the commission to co-opt would not prevent it from appointing specialist advisers or advisory committees to assist in its decisions.

14. A special problem is created by appointments to outside bodies that councils are statutorily required to make. Some of these are found in general legislation, some in local Acts. The appointment of a commission would not of

itself invalidate appointments made by the predecessor council, except where the individual appointed is a councillor holding the appointment ex officio.

15. Where appointments involve non-councillors there would be no difficulty for the commission in making new appointments if they so wished. Where, however, the requirement is for councillors to be appointed, the commission may not have enough members to cope. I propose to deal with this problem by including an Order-making power in the Bill:

- to disapply from the commission the statutory requirements on the predecessor council to make appointments to outside bodies;
- to provide power for the commission (with the Secretary of State's consent) to make instead appointments of non-councillors to such bodies to ensure continued representation of their authority.

DURATION AND APPLICATION OF THE BILL

16. On present plans the Commission Bill will form a permanent part of local government law, and I think this is the right approach. Parliament may, however, seek to limit its effect to, say, 5 years and we should be ready to consider that if it arises.

17. I propose that the Bill should apply to all principal councils in England and Wales as defined in the Local Government Act 1972 (County and District Councils, London Boroughs). This excludes the City of London and the Council of the Isles of Scilly. For technical drafting reasons associated with their unique constitutions it would be difficult to include either body within the provisions of the Bill. We are advised that exclusion of the two bodies decreases rather than increases the risk of the Bill being

hybrid, and in practical terms we are never likely to need to take over either body.

18. We will want the Commission Bill to apply to the Joint Boards that will succeed the abolished Greater London and Metropolitan County Councils, but I would not want to pre-empt the abolition legislation by making specific provision in the Commission Bill if it were introduced first. The main Abolition Bill when introduced can amend the Commission Bill if necessary. If the Commission Bill were introduced later, it would be drafted to include these bodies.

CONCLUSIONS

19. I seek my colleagues' agreement to the following proposals for the Commission legislation:

- ✓ a. a requirement for the commission to report to the Secretary of State from time to time as requested and for the reports to be laid before Parliament and published (paragraph 5);
- ✓ b. payment of Commissioners from central funds (paragraph 8);
- ✓ c. the disapplication of local authority procedural requirements, including the appointment of major policy committees (paragraphs 11 and 13);
- ✗ d. the holding of at least one public meeting annually if practicable; and the publication of a detailed statement of proposed expenditure and financing in the coming year (in addition to the reports to the Secretary of State); (paragraph 12);
- ✓ e. an Order-making power to vary the requirements on the commission to make appointments to outside bodies (paragraph 15);

- ✓ f. the exclusion from the Bill of the City of London and the Isles of Scilly (paragraph 17).

I also seek guidance on:

- g. whether there should be a power of general direction or (as I prefer) a power of general guidance for the Government over the Commission (paragraph 6);
- h. whether the initial period of appointment of a commission should be limited to one year or, as previously suggested, until the end of the financial year following the commission's appointment (paragraph 10).

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COMMISSIONER LEGISLATION: POLICY DECISIONS PREVIOUSLY TAKEN BY E(LF)

The following are the main legislative requirements for appointment, operation and termination of a commission agreed by Ministers:

a. A power for the Secretary of State to dismiss councillors and replace them by a commission, giving wide discretion on the circumstances of intervention but subject to Affirmative Resolution by both Houses of Parliament in each case.

b. A power for the Secretary of State to appoint all members of a commission for a term extendable on an annual basis by Affirmative/Negative Resolution. Because the commission would be unable to complete its work within a year, the initial appointment should run for the remainder of the then current financial year and the following one.

c. A power for the Secretary of State to prescribe remuneration, terms and conditions for members of a commission and to make remuneration a proper charge on the council.

d. Provision that the commission in legal effect replaces the dismissed councillors

e. A power for the commission-led council to levy a single emergency rate which is not subject to prior consultation with industrial ratepayers.

f. A power for the Secretary of State to initiate restoration of an elected council through an Order subject to Affirmative Resolution.

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MAIN OBJECTIVES OF A COMMISSION TO BE SET OUT IN THE LEGISLATION

It is envisaged that the Commissioner Bill will provide for the following main objectives of a commission:

- a. to discharge all the duties and functions of the council for the area;
- b. to take steps so far as practicable to restore to an acceptable level services that have been withdrawn by its predecessor;
- c. to act so as to restore the sound financial management of the authority and enable it to meet its financial obligations.

M.F.S.



10 DOWNING STREET

From the Private Secretary

19 March 1984

I am writing to confirm that a meeting has been arranged for Thursday 22 March after Cabinet to discuss your Secretary of State's minute of 12 March about Commissioner legislation. The following Ministers have been invited: Lord President, Lord Privy Seal, Home Secretary, Secretaries of State for the Environment, Education, Defence, Trade and Industry, Social Services, Scotland, Chief Secretary, Attorney General, Mr. David Mitchell (Department of Transport), and Sir Robert Armstrong.

There has been some confusion with the smaller meeting of Ministers arranged for Monday 26 March. This is to consider Liverpool, and no papers have as yet been circulated.

I am sending copies of this letter to the Private Secretaries to those Ministers invited to attend Thursday's meeting.

David Barclay

John Ballard Esq
Department of the Environment.



NBPM AT 16/3

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From The Secretary of State for Wales

The Rt Hon Nicholas Edwards MP

16 March 1984

Dear Secretary of State,

LOCAL GOVERNMENT POLICIES: COMMISSIONER LEGISLATION

Thank you for copying to me your minute of 12 March to the Prime Minister and the accompanying paper.

I agree with the proposition in paragraph 17 of the paper that the Bill should apply to all principal councils in England and Wales as defined in the 1972 Act. It follows, however, that should the appointment of Commissioners become necessary in Wales it will be for me to appoint them and receive their reports rather than you (as suggested in paragraphs 3 and 7). We shall need to ensure that the legislation properly caters for this.

As regards direction versus guidance (paragraph 6 of your paper), I prefer guidance for the same reasons as you. We must stand as clear as we can from the detail of the Commissioners' administration. At the same time the line of accountability to central government must be kept distinct. I therefore have very considerable doubts about your proposal that the Commissioners should hold public meetings (paragraph 12). I share your concern that such occasions could become a focus for (organised) disruption (your paragraph 11) but they could also turn into an unrepresentative assembly attempting to hold the Commissioners responsible when in fact no such accountability exists. By all means let us ensure that the Commissioners keep the public informed of their actions, but not through public meetings.

/I do not

The Rt Hon Patrick Jenkin MP
Secretary of State for the Environment
2 Marsham Street
LONDON
SW1

Reg AD: Inner cities Pt 4



I do not like either your suggestion that we should resile from the previous decision that the initial period of appointment should be until the end of the financial year following the one in which the Commission is appointed (your paragraphs 9 and 10). It is a mistake to think that very much could be achieved in a matter of months. At least one full financial year will be essential and where there is a really serious financial position it may take longer than that. It is a sad fact, however, that a financial position can be made worse in a very short time. The idea of short alternating periods of Commission and elected council therefore offers the prospect of a ratchet effect in the wrong direction, which is most unappealing. I think we should stick to the earlier proposition.

I am content with what you suggest in the remainder of your paper.

I am copying this to the Prime Minister, Willie Whitelaw, Leon Brittan, Keith Joseph, Michael Heseltine, Norman Tebbit, George Younger, John Biffen, Norman Fowler, Peter Rees, Michael Havers, Nicholas Ridley, and Sir Robert Armstrong.

Yours sincerely

Judy Roberts

Assistant Private Secretary

(Approved by the Secretary
of State and authorised by
him to be signed in his absence).